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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	19-CV-1578 (VEC)
IN RE: NAVIDEA BIOPHARMACEUTICALS	:	
LITIGATION	:	<u>ORDER</u>
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VALERIE CAPRONI, United States District Judge:

WHEREAS the parties’ joint pretrial order states that “Dr. Goldberg seeks damages for Navidea’s breach of the August Agreement in an amount calculated by his expert witness . . . or in the alternative, specific performance,” *see* Joint Pretrial Order, Dkt. 386;

WHEREAS some courts have granted specific performance for non-delivery of convertible stock in rare circumstances, such as where the plaintiff can prove that the defendant is insolvent or on the brink of insolvency, or where the plaintiff is deprived of some unique benefit or item that cannot be compensated by damages. *See Alpha Cap. Anstalt v. Shiftpixy, Inc.*, 432 F. Supp. 3d 326, 340 (S.D.N.Y. 2020). *See also Union Cap. LLC v. 5BARZ Int’l Inc.*, No. 16-CV-6203, 2016 WL 8794475, at *1 (S.D.N.Y. Oct. 5, 2016) (granting the plaintiff’s claim for specific performance after finding that damages would likely be inadequate because the defendant admitted its insolvency and even if the defendant could pay damages, the amount would be difficult to calculate because of the fluctuation of defendant’s stock price);

WHEREAS Navidea has represented to the Court that it deregistered its common stock, preferred stock purchase rights and Series K preferred stock on January 26, 2024, *see* Decl. of Craig A. Dais ¶ 4, Dkt. 372–1; and


WHEREAS Navidea has represented to the Court that it is insolvent, as it is “unable to pay its debts as they become due in the usual course of business,” “is not able to satisfy all of its

outstanding liabilities,” and “is in default on its line of credit, which is secured by the assets of [Navidea],” *see id.* ¶ 6.

IT IS HEREBY ORDERED that the parties should be prepared to discuss damages and whether specific performance is an appropriate remedy at the final pretrial conference on December 12, 2024 at 2:30 P.M. in Courtroom 443 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York, 10007, together with what (if any) fact finding the jury would be required to perform in order for specific performance to be an appropriate remedy.

SO ORDERED.

**Date: November 26, 2024
New York, New York**



VALERIE CAPRONI
United States District Judge